

EXCLUSIVE LICENSE AGREEMENT

AGREEMENT, made this 10th day of November, 1982, by and between Sylvia Manufacturing Corp. at 112 West 34th Street, New York, New York 10001 (hereinafter referred to as "Licensee"), and NINTENDO OF AMERICA INC., a Washington corporation at 18340 Southcenter Parkway, Seattle, Washington, 98188 (hereinafter referred to as "Nintendo").

In consideration of the following mutual covenants and obligations the parties agree as follows:

1. Definitions. As used in this Agreement, the following terms shall have the following respective meanings:

a. "Names and Characters": Trademarks "Nintendo", "Donkey Kong" and "Donkey Kong Junior" and the Mr. Donkey Kong, Donkey Kong Junior, Little Mario the Carpenter, the Beautiful Girl Paulene and other characters, and copyrights in the logos and artwork associated with the Donkey Kong and/or Donkey Kong Junior audio visual works.

b. "Licensed Product(s)":

One and two piece blanket sleepers - 0-14 footed only
pram suits 0-18 months
pram jackets 0-36 months
all of the above in fleece or velour only

c. "Territory":

United States of America

d. "Marketing Date": The license shall terminate in the event the Licensee does not commence in good faith to manufacture, distribute and sell the Licensed Product(s) throughout the Territory on or before July 1, 1983.

2. Grant of Exclusive License. Upon the terms and conditions hereinafter set forth, Nintendo hereby grants to Licensee and Licensee hereby accepts for the term of this Agreement, an exclusive license to utilize the Names and Characters solely upon or in connection with the manufacture, distribution and sale of the Licensed Product(s) throughout the Territory. *

3. Term. The term of this License shall be a period of two years commencing, commencing the 1st day of July 1982, and terminating the 31st day of December, 1984.

4. Royalties. In full consideration for the license granted herein, Licensee shall pay to Nintendo the following:

a. Initial Royalty: The Licensee shall pay Nintendo an initial royalty of \$5000.00 upon execution of this Agreement. The initial royalty shall be non-refundable and shall be applied against the periodic royalties as such royalties become due.

*Nothing herein contained shall preclude use by Licensee of Licensee's own trademark or trademarks licensed from persons other than Nintendo on goods which Licensee manufactures or imports even if some or all of those goods fall within the definition of Licensed Products.

A001814

b. Periodic Royalty Payments.

Option (1) Licensee shall pay to Nintendo periodic royalties equal to 7% of the "gross sales price," as hereafter defined, of the products manufactured and sold under this Agreement by Licensee.

c. Guaranteed Royalty.

Licensee guarantees Nintendo that it shall pay total royalty payments of at least \$50,000 during the term of this Agreement. Licensee shall upon the expiration or termination of this Agreement pay Nintendo the difference, if any, between the guaranteed royalty set forth herein and the aggregate royalty payments received by Nintendo under sections 4a. and b. of this Agreement.

Periodic royalties shall be payable concurrently with the periodic statements required in paragraph 5 hereof, except to the extent offset by the initial royalty theretofore remitted. "Gross Sales Price" as used herein shall mean the bona fide actual billing price of the Licensee to its customers, less customary discounts and allowances allowed, and less any returns and transportation charges allowed on returns. All royalties due Licensor shall accrue upon the sale of the Licensed Product(s), regardless of the time of collection by Licensee. Licensed Product(s) shall be considered sold upon the date when such Product(s) is billed or invoiced, shipped, or paid for, whichever event occurs first. If any Licensed Products are consigned to a distributor by Licensee, the Products shall be considered sold by Licensee upon the date when such Products are delivered to such distributor. There shall be no deduction from the royalties owed to Licensor for uncollectible accounts or for taxes, fees, assessments, or expenses of any kind which may be incurred by Licensee in connection with the royalty payments hereunder. No costs incurred in the manufacture, sale, distribution or exploitation of the Licensed Product(s) shall be deducted from any royalties payable to Licensee.

5. Periodic Statements. Within thirty (30) days following the end of each calendar quarter during the term of this Agreement, Licensee shall furnish to Nintendo complete and accurate statements certified to be accurate by Licensee, or if a corporation, by an officer of Licensee, showing the number, country in which manufactured, country in which sold or to which shipped, description and gross sales price of the Licensed Product(s) distributed and/or sold by Licensee during the preceding calendar quarter, together with any returns made during the preceding calendar quarter. Such statements shall be furnished to Nintendo whether or not any Licensed Product(s) have been sold during the calendar months to which such statements refer. Receipt or acceptance by Nintendo of any of the statements furnished pursuant to this Agreement or of any sums paid hereunder shall not preclude Nintendo from questioning the correctness thereof at any time, and in the event that any inconsistencies or mistakes are discovered in such statements or payments, they shall immediately be rectified and the appropriate payments made.

6. Books and Records. Licensee shall keep, maintain and preserve (in Licensee's principal place of business) for at least two (2) years following termination or expiration of the term of this Agreement complete and accurate records of accounts including without limitation invoices, correspondence, banking and financial and other records pertaining to the periodic statements required to be submitted by Licensee. Such records and accounts shall be available for inspection and audit at any time or times during or after the term of this Agreement during reasonable business hours and upon reasonable notice by Nintendo or its nominee. Licensee agrees not to cause or permit any interference with Nintendo or nominees of Nintendo in the performance of their duties of inspection and audit.

The exercise by Nintendo in whole or in part or at any time or times of the right to audit records and accounts or of any other right herein granted, the acceptance by Nintendo of any statement or statements or the receipt and deposit by Nintendo of any payment tendered by or on behalf of the Licensee shall be without prejudice to any rights or remedies of Nintendo and shall not stop or prevent Nintendo from thereafter disputing the accuracy of any such statement or payment.

7. Indemnifications.

a. Licensee hereby indemnifies and agrees to hold Nintendo harmless from any loss, liability, damage, cost or expense (including reasonable counsel fees) arising out of any claims or suits which may be brought or made against Nintendo by reason of any unauthorized use by Licensee in connection with the Licensed Product(s) or the Names and Characters covered by this Agreement as well as any alleged defects or inherent dangers in said Licensed Product(s) or the use thereof. Licensee agrees to obtain at its own expense product liability insurance providing adequate protection for Nintendo and Licensee against any claims or suits in amounts no less than \$1 million and, within thirty (30) days from the date hereof, Licensee will submit to Nintendo a fully paid policy or certificate of insurance naming Nintendo as an insured party, requiring that the insurer shall not terminate or materially modify such without written notice to Nintendo at least thirty (30) days in advance thereof.

b. Nintendo represents and warrants to Licensee that:

(i) It has, and will have throughout the term of this Agreement, the right to license the Names and Characters to Licensee in accordance with the terms and provisions of this Agreement. Nintendo is the owner of all rights, title and interest in and

(ii) The Names and Characters and Work do not and will not infringe on the rights of others; and

(iii) The making of this Agreement by Licensor does not violate any agreements, rights or obligations existing between Nintendo and any other person, firm or corporation.

*to the trademarks and copyrights referred to in paragraph 1a. hereof.

Nintendo hereby indemnifies Licensee and shall hold it harmless from any loss, liability, damage, cost or expense (including reasonable counsel fees) arising out of any claims or suits which may be brought or made against Nintendo or Licensee by reason of the breach of any of the foregoing warranties or representations, provided that Licensee shall give prompt written notice, cooperation and assistance to Nintendo, at Nintendo's expense, relative to any such claim or suit, and provided, further, that Nintendo shall have the option to undertake and conduct the defense of any suit so brought.

8. Copyright and Trademark Notices.

a. The Licensee shall cause to be imprinted irremovably and legibly on each Licensed Product manufactured, distributed or sold under this Agreement including but not limited to advertising, promotional, packaging and wrapping material and any other such material wherein the Names and Characters appear, (i) the appropriate copyright notice, including year and "Nintendo of America Inc." following an encircled "C", and/or (ii) the initials "TM" as directed in subparagraph (b) hereof, as may be amended from time to time by Nintendo. Licensee agrees to deliver to Nintendo free of cost twelve (12) of each of the Licensed Product(s) together with their packaging and wrapping material for trademark registration purposes in compliance with applicable laws. Any copyrights or trademarks with respect to the Licensed Product(s) shall be procured by and for the benefit of Nintendo and at Nintendo's expense. Licensee further agrees to provide Nintendo with the date of the first use of the Licensed Product(s) in interstate and intrastate commerce.

b. The appropriate copyright notice is as follows: "c (year) Nintendo of America Inc." The year referred to in the copyright notice is the year in which the Licensed Product(s) are first manufactured or the copyright year as provided by Nintendo. The letters "TM" shall be placed next to the words "Donkey Kong", "Donkey Kong Junior" and "Nintendo" whenever these words are used on the licensed products.

c. Licensee shall assist Nintendo, to the extent necessary, in protecting Nintendo's rights to the Names and Characters, and Nintendo if it so desires may commence or prosecute any claims or suits in its own name or in the name of Licensee or join Licensee as a party thereto, but only after prior written notice to Licensee of its intention to do so. Licensee shall notify Nintendo in writing of any infringements or imitations by others of the Names and Characters on articles similar to the Licensed Product(s) if and when such become known to Licensee. Nintendo shall have the sole right to determine whether or not any action shall be taken on account of such infringements or imitations. Licensee shall not institute any suit or take any action on account of any such infringements or imitations except with the prior written consent of Nintendo to do so.

9. Approvals. The Licensee agrees to furnish Nintendo free of cost for its written approval as to quality and style, samples of each of the Licensed Product(s), together with their packaging, hangtags, and wrapping material, before their manufacture, sale or distribution, whichever first occurs, and no Licensed Product shall be manufactured, sold or distributed by the Licensee without such written approval. If disapproval is not received by Licensee within ten (10) business days after Nintendo's receipt of the item submitted for approval, Nintendo's

This approval will not be unreasonably withheld.

approval shall be deemed to have been given, provided however that Licensee shall have notified Nintendo by telex or telegram of its failure to disapprove the submitted item(s) within the ten day period provided for above: failure by Nintendo to then disapprove (or otherwise comment upon) the submitted item(s) with 48 hours after receipt by it of said telex or telegram shall be deemed approval of the item(s) so submitted. Subject, in each instance, to the prior approval of Nintendo, the Licensee or its agents may use textural and/or pictorial matter pertaining to the Name and Character on such promotional display and advertising material as may, in its judgment, promote the sale of the Licensed Product(s). Subsequent to final approval, a reasonable number of product samples will periodically be sent to Nintendo to insure quality control, and should Nintendo require additional samples for any reason, Nintendo may purchase such at Licensee's cost.

10. Distribution: Sub-License/Manufacture.

a. The Licensee shall sell the Licensed Product(s) either to jobbers, wholesalers, distributors or retailers for sale or resale and distribution directly to the public. *If Licensee sells or distributes the Licensed Product(s) at a special price, directly or indirectly, to itself, including without limitation, any subsidiary of any Licensee or to any other person, firm or corporation affiliated with the Licensee or its officers, directors or major stockholders, for ultimate sale to unrelated third parties, the Licensee shall pay royalties with respect to such sales or distribution, based upon the price generally charged the trade by Licensee. *or Licensee may utilize the Licensed Products for favors, premiums, give aways or tie-ins in connection with the sale of these or any other goods.

b. Licensee shall not be entitled to sub-license any of its rights under this Agreement. This shall not affect Licensee's rights to subcontract out the manufacturing of all or any portion of the Licensed Products.

11. Specific Undertakings of Licensee. During the term herein provided for, Licensee agrees that:

a. It will not attack the title of Nintendo in and to the Names and Characters or any copyright or trademark pertaining thereto, nor will it attack the validity of the License granted hereunder;

b. It will not harm, misuse or bring into disrepute the Names and Characters;

c. It will manufacture, sell and distribute the Licensed Product(s) in an ethical manner and in accordance with the terms and intent of this Agreement;

d. It will not create any expenses chargeable to Nintendo without the prior written approval of Nintendo;

e. It will protect to the best of its ability its right to manufacture, sell and distribute the Licensed Product(s) hereunder;

f. It will comply with all laws and regulations relating or pertaining to the manufacture, sale, advertising or use of the Licensed Product(s) and shall maintain the highest quality and standards, and shall comply with any regulatory agencies which shall have jurisdiction over the Licensed Product(s); and

A001818

9. It will provide Nintendo with the date(s) of first use of the Licensed Product(s) in interstate and intrastate commerce.

12. Termination by Nintendo.

a. Nintendo shall have the right to terminate this Agreement without prejudice to any rights which it may have in the premises, whether the provisions of this Agreement, in law, or in equity, or otherwise, upon the occurrence of any one or more of the following events (herein called "defaults"):

(i) If Licensee defaults in the performance of any of its material obligations provided for in this Agreement, or

(ii) The Licensee shall have failed to deliver to Nintendo or to maintain in full force and effect the insurance referred to in subparagraph 7 hereof; or

(iii) If the Licensee shall fail to make any payment due hereunder on the date due; or

(iv) If the Licensee shall fail to deliver any of the statements hereinabove referred to or to give access to the premises and/or license records pursuant to the provisions hereof to Nintendo's authorized representatives for the purposes permitted hereunder, and such failure shall continue for ten (10) days after written notice thereof is sent by Nintendo to the Licensee; or

(v) If any government agency renders a decision after a hearing that finds that the Licensed Product(s) are defective in any way, manner or form, and said defect is not cured within thirty (30)*

(vi) If the Licensee shall be unable to pay its debts when due, or shall make any assignment for the benefit of creditors, or shall file any petition under the bankruptcy or insolvency laws of any jurisdiction, county or place, or shall have or suffer a receiver or trustee to be appointed for its business or property, or be adjudicated a bankrupt or an insolvent; or

(vii) In the event that the Licensee does not commence in good faith to manufacture, distribute and sell the Licensed Product(s) throughout the Territory on or before the Marketing Date specified in subparagraph 1(d) or

(viii) If Licensee shall manufacture, sell or distribute, whichever first occurs, any of the Licensed Product(s) without the prior written approval of Nintendo as provided in paragraph 9 hereof.

b. In the event any of these defaults occur, Nintendo shall give notice of termination in writing to Licensee by certified mail. The Licensee shall have thirty (30) days in which to correct any defaults under subdivisions (i) through (viii) above, and failing such cure

this Agreement shall terminate, and any and all payments then or later due from Licensee hereunder shall then be promptly due and payable and no portion of prior payments shall be repayable to Licensee.

*days after Licensee's receipt of a copy of said finding.

A001819

13. Final Statement Upon Termination or Expiration. Licensee shall deliver, as soon as practicable, to Nintendo following expiration or termination, a statement indicating the number and description of Licensed Product(s) on hand. Following expiration or termination, Licensee may manufacture no more Licensed Product(s), but may continue to distribute and sell its remaining inventory* for a period not to exceed six (6) months following such termination or expiration, subject to payment of applicable royalties thereto. Nintendo shall have the right to conduct a physical inventory in order to ascertain or verify such inventory and/or statement. In the event Licensee refuses to permit Nintendo to conduct such physical inventory, the Licensee shall forfeit its right hereunder to dispose of such inventory. In addition to such forfeiture, Nintendo shall have recourse to all other legal remedies available to it.

*on a nonexclusive basis

14. Payments and Notices. All notices which either party hereto is required or may desire to give to the other shall be given by addressing the same to the other at the address herein-after in this paragraph set forth, or at such other address as may be designated in writing by any such party in a notice to the other given in the manner prescribed in this paragraph. All such notices shall be sufficiently given when the same shall be deposited so addressed, postage prepaid, in the United States mail and/or when the same shall have been delivered, so addressed, to a telegraph or cable company toll prepaid and the date of said mailing or telegraphing shall be the date of the giving of such notice. The address to which any such notices, accountings, payments or statements shall be given are the following:

TO LICENSEE:

Sylva Manufacturing Corp.
112 West 34th Street
New York, New York 10001

with copy to:

Arthur L. Stoll
Ballon, Stoll & Itzler
1180 Avenue of the Americas
New York, New York 10036

TO NINTENDO:

Nintendo of America Inc.
18340 Southcenter Parkway
Seattle, Washington 98188

With copy to:

Howard C. Lincoln
Sax & MacIver
1700 Peoples National Bank Bldg.
Seattle, Washington 98171

15. No Partnership, Etc. This Agreement does not constitute and shall not be construed as constituting a partnership or joint venture between Nintendo and Licensee. Neither party shall have any right to obligate or bind the other party in any manner whatsoever, and nothing herein contained shall give, or is intended to give, any rights of any kind to any third persons.

16. Non-Assignability. This Agreement shall bind and inure to the benefit of Nintendo, its successors and assigns. This Agreement is personal to Licensee, and Licensee shall not sub-license nor franchise, and neither this Agreement nor any of the rights of Licensee hereunder shall be sold, transferred or assigned by Licensee and no rights hereunder shall devolve by operation of law or otherwise upon any receiver, liquidator, trustee or other party.

17. Construction. This Agreement shall be construed in accordance with the laws of the State of New York of the United States of America.

18. Waiver, Modification, Attorney's Fees, Etc. No waiver, modification or cancellation of any term or condition of this Agreement shall be effective unless executed in writing by the party charged therewith. No written waiver shall be excuse the performance of any act other than those specifically referred to therein. Nintendo makes no warranties to the Licensee except those specifically expressed herein. This Agreement constitutes the entire Agreement between the parties. In the event it is necessary for either party to this agreement to employ an attorney to enforce the terms of this agreement, or to file an action to enforce any of the term, conditions, or rights contained herein, or to defend any action, then the prevailing party in any such action shall be entitled to recover from the other all reasonable attorney's fees, costs and expenses as may be fixed by the court, and such attorney's fees, costs and expenses as may be made a part of any judgment entered.

19. Acceptance by Nintendo. This instrument when signed by Licensee shall be deemed only an application for license and not a binding agreement unless and until signed by all parties noted at the appropriate place at the conclusion of this instrument.

20. Ownership of Trademark. The Licensee acknowledges Nintendo's exclusive right, title and interest in and to the Name and Character and will not at any time do or cause to be done any act or thing contesting or in any way impairing or tending to impair any part of such right, title, and interest. In connection with the use of the Names and Characters, the Licensee shall not in any manner represent that it has any ownership in the trademarks or copyrights or registration thereon, and the Licensee acknowledges that use of the Name and Character shall not create in the Licensee's favor any right, title, or interest in or to the trademark or copyright thereon, but all uses of the trademark or copyright by the Licensee shall inure to the benefit of Nintendo. Upon termination of this agreement in any manner provided herein, the Licensee will cease and desist from all use of the Names and Characters in any way (and, subject to paragraph 15,) will deliver up to Nintendo, or its duly authorized representatives, all material and papers upon which the Name and Character appear), and furthermore the Licensee will at no time adopt or use, without Nintendo's prior written consent, any word or mark which is likely to be similar to or confusing with the Names and Characters.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the day and year first above written.

LICENSEE:

SYLVA MANUFACTURING CORPORATION

By [Signature]
Its Vice President

LICENSOR:

NINTENDO OF AMERICA INC.

By [Signature]
Its PRESIDENT

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